

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Tyran Wood,	:	
	:	
Plaintiff,	:	Civil Action 2:10-cv-972
	:	
v.	:	Judge Frost
	:	
Ohio Dep't of Rehabilitation and	:	Magistrate Judge Abel
Correction, <i>et al.</i> ,	:	
	:	
Defendants.	:	

OPINION AND ORDER

Plaintiff Tyran Wood (“Wood”) is an inmate at the Noble Correctional Institution. On October 29, 2010, he brought suit against Defendants the Ohio Department of Rehabilitation and Correction (“ODRC”), Wexford Health Source, and Dr. Andrew Eddy, alleging that he had been denied medical care and physical therapy necessary to properly recover from injuries received in a motorcycle accident preceding his incarceration.

On March 8, 2011, ODRC filed a motion for judgment on the pleadings, arguing that this case should be dismissed against it because the claim Plaintiff has brought, unconstitutional deliberate indifference to serious medical needs, is made actionable under 42 U.S.C. §1983, and it cannot be sued under this statute. Plaintiff did not respond to the motion. On April 21, 2011, the Magistrate Judge

issued a Report and Recommendation, recommending that the motion for judgment on the pleadings be granted. Plaintiff did not file any objections to the Report and Recommendation within the fourteen-day period prescribed by statute.

Upon *de novo* review pursuant to 28 U.S.C. §636(b)(1)(B), the Court **ADOPTS** the Report and Recommendation and **GRANTS** ODRC's motion for judgment on the pleadings (Doc. 16). As Defendant ODRC is an agency of the State of Ohio, it is not a "person" and cannot be sued under 42 U.S.C. §1983. *Will v. Michigan Dept. of State Police*, 591 U.S. 58, 71 (1989). This action is properly **DISMISSED WITH PREJUDICE** with respect to Defendant ODRC.

Plaintiff subsequently filed a renewed motion for appointment of counsel or, in the alternative, for leave to voluntarily dismiss this case pursuant to Fed. R. Civ. P. 41(a)(2). The Magistrate Judge previously denied Plaintiff's initial motion for appointment of counsel without prejudice, stating that important information concerning the continuing nature of Plaintiff's actual injury is not before the Court. Plaintiff's renewed motion provides no additional information, and was not filed, as the Magistrate Judge mandated, after the parties had filed motions for summary judgment.

Defendants Dr. Andrew Eddy and Wexford Health Source timely answered the complaint, but have not taken any subsequent action in this case and would suffer little or no prejudice by the granting of voluntary dismissal. The Court accordingly **GRANTS** Plaintiff's motion (Doc. 20) as a motion to voluntarily **DISMISS** this action **WITHOUT PREJUDICE** with respect to Defendants Dr.

Andrew Eddy and Wexford Health Source. The Clerk of Court is **DIRECTED** to close this case.

/s/ Gregory L. Frost
United States District Judge